

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of)	
)	
Shandong Huajing Glass Co. LTD)	Case No.: EEE-23-0003
)	
Filing Date: February 10, 2023)	
_____)	

Issued: August 3, 2023,

Motion to Deem the Allegations of the Complaint Admitted
Motion for Decision
Initial Decision

Richard A. Cronin, Jr., Administrative Law Judge

This Initial Decision concerns a Motion to Deem the Allegations of the Complaint Admitted (MCA) and a Motion for Decision (MFD) filed by the Department of Energy’s (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) regarding a complaint (Complaint) it filed on February 10, 2023, against Shandong Huajing Glass Co. LTD (Respondent). The Complaint was filed pursuant to the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (EPCA), DOE’s implementing regulations codified at 10 C.F.R. Parts 429 and 431, and DOE’s Procedures for Administrative Adjudication of Civil Penalty Actions (hereinafter referred to as the AAPCA). The Complaint alleges that the Respondent violated the provisions of the EPCA and its implementing regulations by distributing covered industrial equipment, specifically doors for walk-in coolers and walk-in freezers, in commerce in the United States without submitting a report to DOE certifying that the doors complied with the applicable DOE energy conservation standard, as required by 10 C.F.R. § 429.12(a)—(d); 10 C.F.R. § 429.102(a)(1). In this Decision, I grant both motions.

I. BACKGROUND

On or about January 6, 2023, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to the Respondent, which included an offer to settle the alleged regulatory violations if the Respondent would pay a proposed penalty of \$642,538 as an alternative to the then maximum allowed civil penalty of \$1,285,165. MFD Exhibit (Ex.) A at 1; Ex. B at 1; Ex B Attachment 2 at 3. The Respondent failed to respond to the NPCP. Complaint at 6. On February 10, 2023, OGCE filed the Complaint with DOE’s Office of Hearings and Appeals (OHA) and served the Respondent with a copy of the Complaint via email. *Id.* at 8. Under the AAPCA, a respondent is required to file a written answer to the Complaint—or a motion pursuant to § 18(f)(1)–(2)—by the 30th day after

service of the Complaint. AAPCA at § 8(a). The Respondent has failed to file any response to the Complaint. MFD at 2.

On April 21, 2023, over one month after the Respondent's answer or motion was due, OGCE filed the MCA seeking a ruling deeming each of the allegations set forth in the Complaint as admitted, citing the AAPCA, which provides: "A person's failure to timely file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint." AAPCA at § 8(d). The MCA's accompanying MFD further requested that I issue a decision pursuant to AAPCA § 18(f)(5) based upon those deemed admissions, finding that Respondent violated 10 C.F.R. § 429.102(a)(1) and recommending that Respondent pay a civil penalty in the amount of \$1,285,165.

II. FINDINGS OF FACT

Respondent has not responded to the Complaint or any of the documents or motions served upon it during the course of this proceeding. Pursuant to the AAPCA § 8(d), I deem admitted all of the Complaint's allegations due to Respondent's failure, without good cause, to file an answer, or motion in lieu of an answer, by the 30th day after being served with the Complaint. Accordingly, I make the following findings of fact:

1. At all times relevant herein, Respondent was both a person and a manufacturer of industrial equipment, including covered equipment such as doors for walk-in coolers and walk-in freezers.
2. Respondent was subject to the requirements of 10 C.F.R. parts 429 and 431 and the remedies of 10 C.F.R. part 429, Subpart C.
3. Respondent manufactured and distributed in commerce in the United States at least seven basic models (the "subject models"), CD-02, CD-03, FD-01, FD-02, FD-05, SL-D01, and SL-D02 for at least 365 days.
4. The subject models are doors for walk-in coolers and/or walk-in freezers that are subject to the energy conservation standards at 10 C.F.R. § 431.306.
5. Before distributing the subject models in commerce in the United States, Respondent did not submit to DOE a certification reports pursuant to 10 C.F.R. § 429.12(a) certifying that each of the subject models complied with the applicable energy conservation standard.
6. To date, Respondent still has not submitted to DOE a certification report for the subject models.
7. In violation of 10 C.F.R. § 429.102(a)(1), Respondent knowingly failed to make required reports, by not submitting to DOE the certification report required under 10 C.F.R. §

429.12(a) before Respondent distributed the subject models in commerce in the United States by making them available for sale in the United States.

8. Respondent knew or should have known that it had not submitted to DOE a certification report certifying that each of the subject models met the applicable energy conservation standards before Respondent distributed the subject models in commerce in the United States.

MFD Ex. D (Complaint) at ¶¶ 24–30; MFD at 4 n.2.

III. Analysis

1. Motion to Deem the Allegations of the Complaint Admitted

Under the AAPCA, a respondent is required to file a written answer to the Complaint—or a motion pursuant to § 18(f)(1)–(2)—by the 30th day after service of the Complaint. AAPCA at § 8(a). The Respondent has failed to file any response to the Complaint. MFD at 2.

In light of the Respondent’s failure to respond to the Complaint, MCA, or MFD, I must review the adequacy of service made to the Respondent. In the MFD and MCA, OGCE has provided evidence that it used the email addresses listed on the Respondent’s website to serve the Complaint, MCA, and MFD. MFD Ex. F (email transmitting Complaint to Respondents); MFD Ex. G (copy of Respondent’s web page contained email addresses for Respondent’s representatives). OGCE has also presented evidence that on February 10, 2023, it used the email addresses listed on the Respondent’s website to send the Respondent a copy of the MCA and MFD and notice that a response was required to be submitted no later than 25 days after February 10, 2023. MFD at 3; MFD Exhibit J (email transmitting MCA and MFD to Respondent); AAPCA § 18(d). Given these facts, I find that OGCE used a verified email address to serve the Respondent and that Respondent has not answered the Complaint, MCA, or MFD. See AAPCA at §2 (stating that, “If a party does not provide an email address, then a verified email is an email account that has been shown to the satisfaction of the ALJ to be active and belonging to the recipient of an email.”).

Consequently, pursuant to AAPCA § 8(d), I will grant OGCE’s Motion to deem admitted the allegations in its Complaint against the Respondent. As such, I find that the Respondent has admitted to seven knowing violations of 10 C.F.R. § 429.102(a)(1) in which the Respondent failed to submit the required certification report mandated by 10 C.F.R. § 429.12(a).

2. Motion for Decision

Section 18(b)(5) of the AAPCA provides that a party may move for decision, regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings. A party may include with a motion for decision affidavits as well as any other evidence in support of the motion. AAPCA § 18(f)(5). This section also mandates that I must grant a party’s motion for decision if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show that

there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. *Id.*

As discussed above, by its failure to respond to the Complaint, the Respondent is deemed to have admitted to seven knowing violations of 10 C.F.R. § 429.102(a)(1) in which the Respondent failed to submit the required certification report mandated by 10 C.F.R. § 429.12(a). This failure subjects the Respondent to a civil penalty for each violation—every day for at least 365 days. It follows, therefore, that the allegations made in the Complaint are supported by more than a preponderance of the evidence. Accordingly, OGCE is entitled to seek a civil penalty from the Respondent. In the MFD, OGCE has requested that a civil penalty of \$1,285,165 be imposed.

In 2015, Congress amended 28 U.S.C. § 2461 to state that increases in civil monetary penalties apply to penalties assessed after the increase takes effect, including penalties that are assessed after an increase takes effect whose associated violation predated the increase. *See* 28 U.S.C. § 2461, note Sec. 6 ("Any increase under [the Federal Civil Penalties Inflation Adjustment Act of 1990] in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect."). The current civil penalty for the violations at issue in this case is \$542 per model, per day increased from the prior penalty of \$503 per day. 10 C.F.R. § 429.120; Inflation Adjustment of Civil Monetary Penalties, 88 Fed. Reg. 2190 (January 12, 2023). In the MFD, OGCE has requested a fine based upon seven violations per day for 365 days at a rate of \$503 per violation resulting in a civil penalty of \$1,285,165. There is nothing in the record that would merit reducing this penalty. Accordingly, I find that OGCE is entitled to assess a civil penalty of \$1,285,165.

IV. RECOMMENDATION AND ORDER

For the forgoing reasons, it is my recommendation that the Respondent, Shandong Huajing Glass Co. LTD, be assessed a civil penalty of \$1,285,165.

It Is Therefore Ordered That:

- (1) The Motion to Deem the Allegations of the Complaint Admitted filed by the Office of the Assistant General Counsel for Enforcement on April 21, 2023, is granted;
- (2) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on April 21, 2023, is granted;
- (3) The recommended civil penalty that Shandong Huajing Glass Co. LTD be assessed is \$1,285,165.
- (4) This Initial Decision shall become the Final Decision of the Department of Energy if not appealed pursuant to § 32 of DOE's Procedures for Administrative Adjudication of Civil Penalty Actions within 10 days after service upon the parties.

Richard A. Cronin, Jr.
Administrative Law Judge
Office of Hearings and Appeals
United States Department of Energy